Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-167

MILDRED WATTS,

Petitioner

V.

COMMONWEALTH OF VIRGINIA,

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

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TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1
QUESTIONS PRESENTED FOR REVIEW	2
STATUTES INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6
CONCLUSION	8
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

STATUTES

	Page
SECTION 63.1-182, Code of Virginia	3
SECTION 63.1-172, Code of Virginia	3
SECTION 63.1-55.1, Code of Virginia	4

CASES

NUGENT v. NUGENT, 156 Va. 753, 159 SE. 185 (L931) .	6

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Petitioner, Mildred Watts, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Virginia.

OPINIONS BELOW

There were no opinions delivered in the Courts below.

JURISDICTION

The date of the judgment of the Supreme Court of Virginia was May 5, 1977. No re-hearing was requested. No order was entered granting an extension of time in which to petition for

certiorari. The statutory provision believed to confirm this Court jurisdiction to review the judgment in question by writ of certiorari is 28 U.S.C. 1257(3).

QUESTIONS PRESENTED FOR REVIEW

I. Was the refusal of the trial Court to permit Dr. Harry E. Sutelan, Jr., to testify a violation of the due process of the Fourteenth Amendment to the United States Constitution?

II. Was the refusal of the trial Court to dismiss the criminal warrant for lack of evidence and faulty description of the State statute a violation of the due process clause of the Fourteenth Amendment to the United States Constitution?

III. Did the trial Court's conclusion, before petitioner offered any evidence, in ruling on her motion to strike the Commonwealth's evidence, that it was going to continue the case generally for one year, would put petitioner in jail for contempt of Court if she has people living in her home and she has no license, and would impose the maximun jail time, a violation of the process clause of the Fourteenth Amendment to the

United States Constitution?

STATUTES INVOLVED

The statute involved is Section 63.1-182, Code of Virginia, as amended to wit:

> "Any person ... who operates or engages in the conduct of a home for adults without first obtaining a license as required by this article ... shall be guilty of a misdemeanor."

Another statute involved is Section 63.1-172, Code of Virginia, as amended to wit:

> "Definitions.--The following terms whenever used or referred to in this article, shall have the following meanings, unless a different meaning clearly appears from the context:
>
> "A. 'Home for adults' means any place, establishment, or institution, public or private, including any daycare center for adults, operated or maintained for the maintenance or care of four or more adults who are aged, infirm or disabled, except (1) a facility or portion of a facility licensed by the State Board of Health or the State Hospital Board, but including any portion of such facility not so licensed, and (2) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage."

"B. 'Maintenance or care' means the protection, general supervision and oversight of the physical and mental well-being of the aged, infirm or disabled individual."

A third statute involved is Section 63.1-55.1, Code of Virginia, as amended to wit:

"Each local board is authorized to provide, subject to supervision of the Commissioner and in accordance with ruled prescribed by the State Board, protective services for persons who by reason of advanced age or impaired health or physical disability, cannot, unaided, take care of themselves or their affairs, and when such a person has no relative able, available and willing to provide guidance, supervision or other needed care. The authority to provide such services shall not limit the right of any individual to refuse to accept any of the services so offered. (1974, c. 329.)"

The due process clause of the Fourteenth Amendment of the United States Constitution is involved.

STATEMENT OF THE CASE

Dr. Harry Sutelan, Jr., a general practioner practicing for the past 50 years in Virginia, examined the five (5) adults who lived at the petitioner's home on May 13, 1976 at the premises. The Court refused to permit the doctor to

testify. The written results of Dr. Sutelan's findings on the day of his examination were introduced into evidence as part of the record (Tr. 99-102, 103, Exhibit D-3).

The warrant charged petitioner of operating a rest home in the City of Norfolk, Virginia in violation of Section 63.1-182, Code of Virginia. The statute makes it an offense to operate a home for adults, not a rest home in violation of the statute.

The only evidence offered by the Commonwealth to show that there were four or more adults who were aged, infirm or disabled was the testimony of Sergeant Cameron of the Norfolk, Virginig, Police Department that several of the adults appeared to be elderly, offered no medical evidence as to the mental or physical condition of the adults in petitioner's home.

The trial Court, before the petitioner offered any kind of evidence, in considering the motion to strike the Commonwealth's evidence, remarked that it is going to continue the case generally for one (1) year and would hold petitioner in contempt if

she had any people in her home without having a license and would give her maximun jail time (Tr., pt 63). Each of these questions was raised in the petition for appeal in the Supreme Court of Virginia under the questions involved on appeal.

REASONS FOR GRANTING THE WRIT

I. Refusal to permit the doctor of medicine to testify that he examined the five (5) adults a month after the arrest and that they appeared to be physically and mentally capable of caring for themselves violated the due process clause of the Fourteenth Amendmant to the United States Constitution. The Commonwealth failed to produce any medical evidence as to the physical and mental condition of those five (5) adults. The issue whether four (4) or more adults were aged, infirm or disabled was a defense that the petitioner relied on Dr. Sutelan whose testimony was not admitted by the trial Court. His testimony was relevant. Nugent v. Nugent, 156 Va. 753, 159 SE. 185 (1931).

II. Due process was violated by refusal to

dismiss the warrant for lack of evidence and faulty description of the statue.

The sole testimony of the Commonwealth as to the four (4) adults being either aged, infirm or disabled was the testimony of a police officer that several appeared to be elderly, was not sufficient to support the conviction. Annie Fink was only 55 years old and testified she was able to care for herself. Lewis Westbrooke was 63 with no health problems. Luke Williams, age 61, was in good condition. There were only five (5) adults on the premises of the petitioner.

III. The conclusion of the trial Court to continue the case generally, after petitioner was in jeopardy, and that the Court was going to hold petitioner in contempt if she had people living on the premises and had no license and would impose a maximum jail sentence, violated the due process clause of the Fourteenth Amendmant of the United States Constitution.

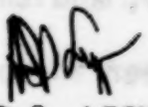
The trial Court heard the case without a jury. By making its ruling before petitioner put on her

evidence, the Court was prejudging the evidence; in effect, found the petitioner guilty before she offered any evidence. Petitioner had a right to have the Court reserve its ruling and withhold any ruling until she put on her evidence. The effect of the Court's ruling before she put on any evidence, at the close of the Commonwealth's evidence, was to deny petitioner due process.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be granted and that the judgment of the Supreme Court of Virginia should be reversed, with direction either to dismiss the warrant or award the petitioner a new trial.

Respectfully submitted,



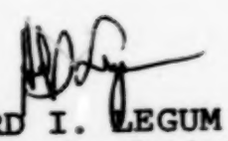
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CERTIFICATE OF SERVICE

Pursuant to Rule 33, paragraph 3 (b), I certify that service was made on the respondent Commonwealth of Virginia by depositing three printed copies of the Petition for Certiorari in a United States mail box, with first class postage prepaid, addressed to Joseph Campbell, Commonwealth's Attorney for the City of Norfolk, Virginia, counsel of record for respondent, at his post office address of 800 E. City Hall Avenue, Norfolk, Virginia 23510, this 29TH day of July, 1977.



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a member of the bar for
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United States